IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2005

C O R A M

THE HONOURABLE Mr.JUSTICE P.SATHASIVAM
AND
THE HONOURABLE Mr.JUSTICE AR.RAMALINGAM

Writ Petition Nos.16172 of 1998, 2317, 3333, 3334, 9869 to 9873, 11791, 17485 of 1999, 16041 of 2000 and 4027, 4028, 5334, 10076 of 2004

and WPMP.Nos.24448 of 1998, 3300, 4747, 4748, 25414, 14049, 14051, 14053, 14046, 14048, 16719 of 1999, 23269 of 2000, 4765, 5766 and 6181 of 2004.

..

1.Union of India, rep. by its
The Divisional Personnel Officer,
Southern Railway, Tiruchirappalli Division,
Tiruchirappalli 620 001 ..1st Petitioner in WP.16172/98
4th Petitioner in WP No.3333/99,
3334/99.

2.The Chairman,
Railway Board,
Ministry of Railways,
New Delhi 110 001 ..2nd Petitioner in WP 16172/98
1st Petitioner in WP 16041/2000

3.Chief Personnel Officer,
southern Railway,
Headquarters Office,
Chennai 600 033 ..3rd Petitioner in WP 16172/98
2nd Petitioner in WP 3333,3334/99,
11791/99,16041/2000, 4028/2004
1st Petitioner in WP 4027/2004,
5334/2004, R3 in WP 10076/2004

4.Union of India rep. by its
Divisional Personnel Officer,
Southern Railway, Madurai Division,
Madurai ..1st Petitioner in WP 2317/99
3rd Petitioner in WP 3333/99,3334/99
2nd Petitioner in 17485/99
3rd Petitioner in WP 5334/2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5.Divisional Personnel Officer,
Hubli Division, South Central Railway
Hubli Post, Karnataka ..2nd Petitioner in WP 2317/99
9869/99, 9870/99,9871/99,9872/99,
9873/99

6.Union of India
rep. by its Secretary,
Ministry of Railways,
Rail Bhavan, New Delhi ..1st Petitioner in WP 3333/99,
3334/99

7.Union of India, rep. by its
The Senior Divisional
Personnel Officer
Chennai Division,
Southern Railway,
Chennai-600 003 ..1st Petitioner in WP.9869/99,9870/99
9871/99, 9872/99, 9873/99
4th Petitioner in WP.11791/99,4028/2004

8. The Union of India,
rep. by the General Manager
Southern Railway,Park Town
Chennai-600 003 .1st Petitioner in WP.11791/99,17485/99
4028/99, R2 in WP.10076/2004

9. The Divisional Railway Manager
Chennai Division, NGO Annexure
Chennai-3. ..3rd Petitioner in WP.11791/99,
4028/2004, R4 in WP.10076/2004

10. Chief Workshop Manager
Electrical General Branch
Matunga, Bombay. ..3rd Petitioner in WP.17485/99

11. Chief Personnel Officer
Western Railway, Churchgate
Mumbai-420 020. ..3rd Petitioner in WP.16041/2000

12. The Chief Works Manager
Loco Works/Per. Southern Railway
Chennai-600 023. ..2nd Petitioner in WP.4027/2004

13. The Divisional Railway Manager
Madurai Division, Southern Railway
Madurai. ..2nd Petitioner in WP.5334/2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. K.Rajasekaran ..Petitioner in WP.10076/2004

Vs.

1. S. Santhanam ... Ist Respondent in W.P.16172/98

S. sivanantham ... Ist Respondent in W.P.2317/99

R. Puvanendran ... Ist Respondent in W.P.3333/99

M. Abbas Mandri ... Ist Respondent in W.P.3334/99

C. Gunasekar ... 2nd Respondent in W.P.9869/99

K. chandrasekaran ... 2nd Respondent in W.P. 9870/99

S. Mathivanan ... 2nd Respondent in W.P.9871/99

R. Sampath Kumar ... 2nd Respondent in W.P. 9872/99

D. Krishnadu ... 2nd Respondent in W.P. 9873/99

G. Ramachandran Pillai ... 2nd Respondent in W.P.11791/99

K.S. Alla Pitchai ... 1st Respondent in W.P.17485/99

Rajini Ravichander ... 2nd Respondent in W.P. 16041/99

N. Krishna Kumar ... 2nd Respondent in W.P. 4027/2004

R. Jayakumar ... 2nd Respondent in W.P. 4028/2004

K. Thangavel ... 2nd Respondent in W.P.5334/2004

The Senior Divisional
Personnel Officer
Chennai Division,
Southern Railway,
NGO Annexure, Park Town,
Chennai -3 ... R5 in W.P.10076/2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

...2nd Respondent in WP.Nos.16172/98, 2317,3333 and 3334/99, 17485/99, 533/04. Ist Respondent in WP.Nos.9869 to 9873/99, 11791/99, 16041/99 4027/2004, 4028/2004 and WP.No.10076/04.

Petitions filed under article 226 of the constitution of India praying for the issue of a writ of certiorari, calling for the records from the file of the 2nd respondent and 1st Respondent respectively and quash the final order made in O.A.Nos.1341/94, 637/95, 1189/97, 1190/97, 429/96, 575/96, 135/96, 431/96, 404/96, 187/98, 470/98, 414/98, 517/2003, M.A.233 and S.A.292/2003. O.A.574/2003. and 138/2003, dated 5.1.98, 17.2.98, 6.2.98, 29.1.98, 22.6.98, 15.4.99, 20.4.2000, 6.1.2004, 9.10.2003 5.12.2003 and 11.9.2003 respectively.

For petitioners in WP.Nos.16172/98, 2317, 3333, 3334, 17485/1999 and 5334/04 ... Mr.R. Thiyagarajan,Sr. Counsel for Mr. M. Sekar.

For petitioners in WP.Nos.9869 to 9873/1999 and 11791/1999 .... Mr. R.Thiyagarajan, Sr. Counsel for Mr. V. Radhakrishnan.

For petitioner in WP.Nos.4027 and 4028 of 2004 ... Mr. P.H. Arvindh Pandian.

For petitioner in WP.No.10076 of 2004 .. Mr. L. Chandrakumar.

No appearance for petitioner in WP.No.16041 of 2000.

For R.1 in W.P.Nos.16172/98, 2317, 3333, 3334, 17485/99, 4027, 4028/04 and 5334 of 2004 .. Mr. L. Chandrakumar.

For R.2 in W.P.Nos.16041/00, 9869 to 9873/99 .. Mr. C.K. Chandrasekar.

..

COMMON ORDER

(Order of the Court was made by P.SATHASIVAM,J.,)

Aggrieved by the orders of the Central Administrative Tribunal, allowing the applications filed by the applicants therein, the Railway Administration has filed the above writ petitions before this Court.

2. Since the issue in all the petitions is one and the same, they are being disposed of by the following common order.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. For convenience, we shall refer the case of the parties in W.P.No.16172 of 1998.

(a) The applicant before the Tribunal / second respondent in this writ petition by name S. Santhanam, approached the Central Administrative Tribunal, for setting aside the Order No.T/P. 481/I/3/SMS/Pilot dated 22.04.1994 and Order No.T/P.721/SO/94 dated 17.10.1994 issued by the Divisional Personnel Officer, Southern Railway, Tiruchirappalli Division as illegal and consequently direct the said authority to protect the last drawn pay of the applicant on the date of his transfer to Southern Railway and to pay his salary with all consequential fixation and revision and other benefits.

(b) According to the applicant, he joined the Railway Service as Assistant Station Master on 19.02.1988. He was appointed in the Western Railway and in due course, he was promoted to the scale of Rs.1400-2300/-. After he had functioned as such in the scale of Rs.1400-2300 for more than two years in the Western Railway, he made a request for transfer to Southern Railway. By Office Order dated 22.05.1992, he was transferred to Southern Railway and posted in Tiruchirappalli Division. The transfer having been ordered at his request, he has to forego his seniority in the category of Assistant Station Master. The order dated 22.05.1992, thus placed the applicant as junior to all permanent, temporary and officiating Assistant Station Masters in the Division to which he was transferred on the date of his joining the new seniority unit.

(c) After the applicant joined the new seniority unit in Southern Railway, he was fitted in lower scale of Rs.1200-2040, to which the applicant did not have any objection, as that was the scale at the bottom of the seniority unit. However, the actual pay that he was drawing at the time of transfer, viz., the scale of Rs.1400-2300 is to be protected and such payment is in consonance with the provisions of the Indian Railway Establishments Code and the Manual as well as the conditions of transfer. While so, the Divisional Personnel Officer, Southern Railway, Tiruchirappalli Division issued an order dated 22.04.1994, re-fixing the pay of the applicant by reducing it considerably in the scale of Rs.1200-2040. The said order is illegal and arbitrary. An identical action of the same Southern Railway has been held to be illegal in the case of similarly situated employees by the Central Administrative Tribunal, Ernakulam Bench in O.A.No.333 of 1992. In spite of the said order, the Trichirappalli Division has fixed the applicant's pay to less than what he was drawing before his transfer. It is also contrary to para 1313 (a) (ii) of the Indian Railway Establishments Code Volume II.

4. The Railway Administration filed a reply statement before the Tribunal, wherein it is stated that while the applicant was holding the post of Station Master Grade III in the scale of Rs.1400-2300, he applied for Inter-Railways request transfer to Southern Railway on bottom seniority in the scale of Rs.1200-2040 as Assistant Station Master. His request was accepted and the applicant joined the Trichirappalli Division

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

on 29.06.1992 as Assistant Station Master in the scale of Rs.1200-2040 on bottom seniority. His pay was re-fixed in the scale of Rs.1200-2040, after joining Tiruchirappali Division, as per the orders then in force. The judgment of the Central Administrative Tribunal (Ernakulam Bench) is not applicable to the case of the applicant, since the applicant in O.A.No.333 of 1992 had been confirmed in Higher Grade of Rs.1400-2300 in Palghat Division.

5. In all other writ petitions since similar averments have been made by the respective parties, as said earlier, there is no need to refer the same.

6. The Central Administrative Tribunal (Madras Bench), on going through the materials and the order of Central Administrative Tribunal (Ernakulam Bench) dated 10.12.1996 in O.A.No.1041 of 1995, wherein an identical issue had been decided in favour of the applicant therein and also taking note of the fact that following the said decision, Railway Board circulated the same by its letter dated 14.08.1997, affording pay protection to the applicant therein, allowed the application.

7. Since similar order has not been passed in favour the applicants on the basis of the decision of Ernakulam Bench, the applicants therein have filed WP.Nos.4027, 4028, 10076 of 2004 and 16041 of 2000.

8. Heard the learned senior counsel for the Railway Administration and the learned counsel for the respondents / applicants.

9. For convenience, we shall refer the parties, viz., the petitioners as Railway Administration and the respondents as applicants.

10. The only point for consideration in these writ petitions is, whether the Central Administrative Tribunal is right in accepting the case of the applicants that even after request transfer, they are entitled to have the pay in the scale of Rs.1400-2300, drawing prior to their transfer?

11. It is the categorical case of the applicants that those who are working as Assistant Station Masters in the scale of pay of Rs.1200-2040 were earlier working in the higher scale of pay of Rs.1400-2300. It is also their claim that their promotion to the scale of Rs.1400-2300 was not on regular basis and thereafter, on their request, they were transferred to a different Division in the lower scale of Rs.1200-2040. It is the claim of the applicants that on such transfer they are entitled to have their pay in the scale of Rs.1400-2300 protected in terms of Rule 1313 (a) (ii) of the Indian Railway Establishment Code Vol.II.

12. It is the case of the Railway Administration that pay protection was denied to the applicants on the ground that they had not completed two years in the scale of Rs.1400-2300 in parent Division. It was demonstrated before the Tribunal as well as before us that actual pay

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that the applicants were drawing in the higher scale of Rs.1400-2300 at the time of transfer was protected and such payment is in consonance with the provisions of the Indian Railway Establishment Code and Manual as well as the conditions of transfer. As rightly stated, that may be the reason, why the order transferring the applicants does not mention about the reduction in scale of pay as one of the conditions for transfer, but merely mentions about loss of seniority. It is relevant to point out that the completion of two years to gain the higher scale of pay was considered by the CAT, Ernakulam Bench. After considering the relevant Rule, viz., Rule 1313(a)(3) of the Indian Railway Establishment Code Volume II, the Ernakulam Bench has concluded that it was enough to protect the claim of the employee and there was no justification for putting him in the lower pay scale. The Bench has observed that under the terms and conditions of transfer, the pay which the applicant was drawing in higher post was not required to be protected when he joined the lower post. While considering the said contention and taking note of the fact that as the Railway Administration is one of the largest employer of the country, yardstick has to be uniformly applied with reference to the Rules ensuring fairness, equity and equality, the Tribunal accepted the claim of the applicants / railway employees and rejected the stand taken by the Railway Administration.

13. Even prior to this order, the very same Ernakulam Bench while considering similar grievance of Railway employees against the orders of the Railway Administration putting them in a lower grade, quashed the same and declared that the applicants therein are entitled to have their pay in the scale of Rs.1400-2300 prior to the transfer protected and allowed the applications on the above terms.

14. It is not in dispute that in all the impugned orders, the Central Administrative Tribunal merely applied and followed the decision rendered by Ernakulam Bench. The learned counsel appearing for the applicants have also brought to our notice that the Railway Administration had implemented the said decision. In such a circumstance, though Mr. R. Thiyagarajan, learned senior counsel vehemently argued to distinguish the decision of the Ernakulam Bench, as rightly contended, the facts and issues in all these cases, including the cases that were decided by the Ernakulam Bench are one and the same and we are of the view that the Tribunal (Madras Bench) is perfectly right in granting relief by following the decision of the Ernakulam Bench.

15. In the case of Union of India vs. V.N. Bhat reported in 2003 (8) SCC 714, the Supreme Court has held that even on voluntary transfer, employee only loses seniority and not other benefits and cannot be deprived of his experience and eligibility for promotion.

16. The learned senior counsel appearing for the Railway Administration very much relied on the decision of the Supreme Court in the case of Comptroller & Auditor General of India vs. Farid Sattar reported in 2000 (4) S.C.C. 13, wherein while considering FR.22(I)(a)(2),

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

22 (I)(a)(3) and the agreed terms and conditions, the Supreme Court held that the pay of the employee had to be fixed with reference to the lower pay scale and not with reference to the pay drawn by him in the higher post, since he was to be considered as a direct recruit in the lower post.

17. Mr. Chandrasekar, learned counsel appearing for some of the applicants, after taking us through the entire factual details in the above said Supreme Court decision would contend that the said decision is not applicable to the case on hand. A perusal of the said decision shows that viz., Comptroller and Auditor General of India and others disputed the contentions of the respondent, on the ground that he was bound by the terms and conditions of the unilateral transfer and on acceptance of such terms and conditions, the respondent was required to tender technical resignation from the post of Senior Accountant and to join as a direct recruit in the lower post of Accountant ranking junior most in the cadre of Accountant. As rightly pointed out, in the present case, none of the applicants were asked to tender technical resignation from the post held prior to the order of transfer. Accordingly, we accept the claim of the learned counsel for the applicants and considering the special feature in the decision of the Supreme Court, the same is not directly applicable to the case on hand and it is distinguishable.

18. The learned counsel appearing for the applicants have also brought to our notice a Division Bench decision of this Court in the case of Union of India vs. Registrar, CAT reported in 2002 (3) L.L.N. 352. It is a writ petition filed by the very same Southern Railway, Chennai, questioning the order of Central Administrative Tribunal, in and by which the Tribunal allowed the application filed by the second respondent therein. Since the Division Bench decision is directly on the point, we intend to refer to the factual details therein. The second respondent therein entered the service in South Central Railway in the post of Traffic Signaller. He was promoted to the post of Assistant Station Master, then to Station Master Grade III and ultimately to Station Master Grade II, where his pay was Rs.1600-2660. He was then serving in the Hubli Division in Karnataka. From there, he sought transfer to the Southern Railway, which transfer was given, but strangely he was placed in the pay scale of Rs.1200-2040. For this, the Railway Board relied upon their resolution that where there is a transfer from one Railway to another, the person concerned would be entitled to be placed at the bottom of the seniority list only. Its further case was that the transfer from one Railway to another can be done only if the post in which such an employee is transferred has the element of direct recruitment. It is also its claim that since the post of Station Master did not have the element of direct recruitment, he was placed in the post of Assistant Station Master, which had the element of direct recruitment and therefore he was bound to be placed in the lower pay scale of Rs.1200-2040. Aggrieved by this, the second respondent has approached the Tribunal. The Tribunal has allowed the Original Application and directed that he shall be placed in the pay scale of Rs.1600-2660, which is applicable to the Station Master Grade II, but in that his seniority will be at the bottom.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

19. An argument was advanced on behalf of the Railway Administration that it was possible for an employee to seek transfer from one Railway to another like the second respondent, if only the employee sought for a post, which could be filled in by direct recruitment, fully or partly. For this, learned counsel invited the attention of the Court to the decision of the Railway Ministry under rule 226 of the Railway Establishment Code. On the side of the applicant it was argued that the post of Station Master always had an element of direct recruitment to the extent of 25 per cent. The Division Bench, accepted the argument of the applicant and rejected the argument of the Railway Administration for the simple reason that it is a trite principle that where the concerned person has to be put at the bottom of the seniority, for doing so, he cannot be straight away reverted to the post in which he was working earlier. The following conclusion of the Division Bench is relevant:-

> "8. The argument raised on behalf of the writ petitioner Railway Board must fail for the simple reason that it is a trite principle that where the concerned person has to be put at the bottom of the seniority for doing so he cannot be straight away reverted to the post in which he was working earlier. Here is clear example where a person who was working as Assistant Station Master and had earned two promotions, is being posted in the post which is two stages below the post of Station Master, merely because of his request transfer. This is to say the least absurd interpretation of the rule. "

20. After finding so, the Division Bench has concluded that the Tribunal has correctly read the Rule and ordered the second respondent to be placed in the pay scale applicable to the Station Master Grade II and dismissed the writ petition as devoid of any merit. It is also brought to our notice that the Special Leave Petition filed by the Railway Administration came to be dismissed by the Hon'ble Supreme Court at the admission stage. Though it was argued that there is no law laid down by the Supreme Court by dismissing the SLP filed by the Railway Administration, the fact remains, the decision of the earlier Division Bench, viz., 2002 (3) LLN 352 (cited supra) is binding us on the basis of the precedence and considering the relevant rules and factual details, we are in respectful agreement with the view expressed by the Division Bench and reject the contra argument made by the Railway Administration.

In the light of our discussion, we are unable to accept the stand taken by the Railway Administration. On the other hand, we are in agreement with the decision of the Central Administrative Tribunal and we

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

do not find any ground for interference. Consequently, the writ petitions filed by the Railway Administration are dismissed and the writ petitions by the applicants are allowed. No costs. Connected WPMPs., are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kh.

To
1. The Registrar
Central Administrative Tribunal
High Court
Chennai.

2. The Divisional Officer,
Southern Railway, Tiruchirappali Division 620 001.

3. The Chairman,
Railway Road, Ministry of Railway,
New Delhi 110 001.

4. The General Manager,
Southern Railway, Park Town,
Chennai 600 003.

5. Divisional Personnel Officer,
Southern Railway,
Madurai.

6. Divisional Personnel Officer,
Hubli Division, South Central Railway,
Karnataka.

7. The Chief Personnel Officer,
Southern Railway, Park town,
Chennai 3.

8. The Secretary,
Ministry of Railways,
Rail Bhavan, New Delhi.

9. The Chief Works Manager,
Electrical General Branch,
Matunga, Bombay.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. The Divisional Railway Manager.
Chennai Division, Southern Railway,
NGO Annexure, Park Town,
Chennai 3.

11. The Chief Personnel Officer,
Western Railway, Church gate,
Mumbai 20.

12. The Chief Works Manager,
Loco Works/Per, Southern Railway,
Chennai 1.

13. The Senior Divisional Personnel Officer,
Chennai Division, Southern Railway,
NGO Annexure, Park Town, Chennai 3.

14. The Divisional Railway Manager,
Madurai Division, Madurai.

15. The Senior Divisional Personnel Officer,
Chennai Division, Southern Railways, Chennai 3.

+ 2 CCs to M/S.Row & Reddy, Advocate SR NO 28342, 28343

+ 6 CCs to M/s.V. Radhakrishnan, Advocate SR Nos.28430, 28431, 28432, 28433, 28434, 28435.

+ 6 CCs to Mr.M. Sekar, Advocate SR NO 28533

+ 2 CCs to Mr.L.Chandrakumar, Advocate SR Nos.28465, 28464

+ 1 CC to Mr.Harvindh Pandian, Advocate SR NO 28582

+ 1 CC to Mr. V.P.Rajendran, Advocate SR NO 28514

Writ Petition Nos.16172 of
1998 etc., batch
08/7/2005

mdr(co)
gp,kk, sr, dv, km/15.7.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/